

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LOCAL 295/LOCAL 851 IBT EMPLOYER)	
GROUP PENSION TRUST AND WELFARE)	
FUNDS AND DISTRICT NO. 9, <i>et al.</i> ,)	Case No. 1:08-cv-421
)	
Plaintiffs,)	(Judge Sandra S. Beckwith)
)	(Magistrate Judge Timothy S. Black)
-v-)	
)	
FIFTH THIRD BANCORP, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants submit this Notice of Supplemental Authority to direct the Court's attention to the Southern District of Ohio's recent decision in *In re Huntington Bancshares Inc. Securities Litigation*, No. 2:07-cv-1276, 2009 U.S. Dist. LEXIS 114081 (S.D. Ohio Dec. 4, 2009) (attached at Tab A). This decision provides further support for Defendants' Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint (Doc. No. 78) and the Underwriter Defendants' Supplemental Memorandum Supporting Motion to Dismiss (Doc. No. 79). The court held that the plaintiffs' allegations of knowingly made, false statements pertaining to the bank's exposure to subprime lending failed to adequately allege falsity in light of the bank's disclosures and the confidential witnesses' lack of allegations showing that the defendants knew any statement to be false when made. The court further held that the plaintiffs failed to adequately allege scienter when the individual defendants did not sell company stock during the class period, the company was not required to restate its financial statements, the plaintiffs made general allegations regarding the receipt of reports and access to information by virtue of the defendants' positions

within the company, and the allegations of motive were common to all executives. The court dismissed the complaint with prejudice.

Dated: January 6, 2010

Respectfully submitted,

s/ James E. Burke

James E. Burke (0032731)
Joseph M. Callow, Jr. (0061814)
Jennifer J. Morales (0076835)
Danielle M. D'Addesa (0076513)
Anthony M. Verticchio (0084645)
KEATING MUETHING & KLEKAMP PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
Telephone: (513) 579-6400
E-mail: jburke@kmklaw.com
jcallow@kmklaw.com
jmorales@kmklaw.com
ddaddesa@kmklaw.com
averticchio@kmklaw.com

*Attorneys for Fifth Third Bancorp, Fifth Third
Securities, Fifth Third Capital Trust VI, Fifth
Third Capital Trust VII, Kevin T. Kabat,
Christopher G. Marshall, and Daniel T.
Poston*

-and-

[continued on next page]

s/ Glenn Virgil Whitaker

Glenn Virgil Whitaker (0018169)
Mary C. Henkel (0039563)
Dorothea K. Langsam (0082973)
VORYS, SATER, SEYMOUR AND PEASE LLP
221 East Fourth Street, Suite 2000
Atrium Two
Cincinnati, Ohio 45202
Telephone: (513) 723-4000
E-mail: gvwhitaker@vorys.com
mchenkel@vorys.com
dklangsam@vorys.com

*Attorneys for Darryl F. Allen, John F. Barrett,
Ulysses L. Bridgeman, Jr., James P. Hackett,
Gary R. Heminger, Joan R. Herschede, Allen
M. Hill, Robert L. Kock, II, Mitchel D.
Livingston, Ph.D., Hendrik G. Meijer, James
E. Rogers, George A. Schaeffer, Jr., John J.
Schiff, Jr., and Dudley S. Taft.*

-and-

s/ Robert A. Pitcairn, Jr.

Robert A. Pitcairn, Jr. (0010293)
KATZ, TELLER, BRANT & HILD
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202
Telephone: (513) 977-3477
E-mail: rpitcairn@katzteller.com

*Attorney for Defendants UBS Securities LLC,
Citigroup Global Markets Inc., Merrill Lynch,
Pierce, Fenner & Smith Incorporated, Morgan
Stanley & Co. Incorporated, Wachovia
Capital Markets, LLC, Banc of America
Securities LLC, Credit Suisse Securities (USA)
LLC and Barclays Capital Inc*

OF COUNSEL:

Herbert S. Washer
Adam S. Hakki
Daniel Lewis
SHEARMAN & STERLING LLP
559 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
E-mail: herbert.washer@shearman.com
ahakki@shearman.com
daniel.lewis@shearman.com

Laura A. Hinegardner
KATZ, TELLER, BRANT & HILD
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202
Telephone: (513) 977-3484
E-mail: lhinegardner@katzteller.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record via the Court's ECF system this 6th day of January, 2010.

s/ Anthony M. Verticchio
Anthony M. Verticchio